

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LEE ANN MOATS)	
Claimant)	
VS.)	
)	Docket No. 186,776
WESTVIEW MANOR)	
Respondent)	
AND)	
)	
HARTFORD ACCIDENT & INDEMNITY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant requested review of the Award entered by Administrative Law Judge John D. Clark dated February 29, 1996. The Appeals Board heard oral argument on July 23, 1996.

APPEARANCES

Claimant appeared by her attorney, Robert R. Lee of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Richard J. Liby of Wichita, Kansas. The Workers Compensation Fund appeared by its attorney, Jeff K. Cooper of Topeka, Kansas.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award. In addition, the Appeals Board considered the deposition transcript of Theodore Allen Moeller, Ph.D., dated November 17, 1995, which the parties agreed was a part of the evidentiary record.

ISSUES

In Docket No. 176,066, the Administrative Law Judge awarded claimant permanent partial disability benefits based upon a 5 percent whole body functional impairment for a February 15, 1993, work-related accident. That proceeding was not appealed to the Appeals Board although it was litigated in conjunction with the proceeding now before us.

In Docket No. 186,776, the Administrative Law Judge awarded claimant only temporary total disability benefits for a January 11, 1994, accident. Claimant requested review of that docket number and the issue of nature and extent of disability. Nature and extent of disability is the only issue before the Appeals Board on this review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record the Appeals Board finds:

The Award entered by the Administrative Law Judge should be affirmed. The Appeals Board adopts the analyses, findings, and conclusions of the Administrative Law Judge as its own.

Claimant contends she sustained permanent injury when she turned to lift a sugar bowl while working for the respondent on January 11, 1994. At the time of the incident, claimant had returned to work for three partial days after being off work for about 11 months due to the injury she sustained in February 1993 when she slipped at work and fell on her back. The Administrative Law Judge found that the January 1994 incident only temporarily aggravated her back complaints and the Appeals Board agrees.

The greater of the weight of the medical evidence supports the conclusion that claimant sustained only a temporary aggravation as a result of the January 1994 incident. Ernest R. Schlachter, M.D., whom the Court appointed to perform an independent medical examination pertaining to the February 1993 accident, testified that he believes claimant does not have any functional impairment as a result of either the February 1993 or January 1994 incidents. He bases that opinion upon his initial clinical evaluation and a subsequent review of additional records and depositions. Robert A. Rawcliffe, Jr., M.D., evaluated the claimant pursuant to the Administrative Law Judge's request after the January 1994 incident and found that claimant sustained a 5 percent whole body functional impairment due to a fractured coccyx sustained in the February 1993 accident. Although he believed claimant may have strained her cervical and lumbar spine, he assigned no functional impairment for those complaints.

Theodore Allen Moeller, Ph.D., a psychologist selected and paid by the respondent, saw claimant twice and testified that he thought claimant was intentionally exaggerating and magnifying her symptoms. Peter V. Bieri, M.D., testified that he examined claimant's medical records for the period both before and after the January 1994 incident and concluded claimant sustained no permanent impairment due to that event. Finally, Anthony G. A. Pollock, M.D., the orthopedic surgeon who treated claimant after the January 1994 incident, testified that claimant, from time to time, would experience exacerbations and aggravations because of the February 1993 accident and that there were no clinical findings to support the conclusion that claimant sustained permanent injury from the January 1994 incident.

Claimant contends she sustained permanent injury in January 1994 because she experienced additional pain. However, her treating physician, Dr. Pollock, found those complaints inconsistent with his findings. Based upon the entire record, the Appeals Board finds that claimant has failed to establish permanent injury as a result of the January 1994 incident and, therefore, her benefits from that event are limited to temporary total disability and medical benefits as determined by the Administrative Law Judge.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated February 29, 1996, should be, and hereby is, affirmed.

In addition to those deposition costs listed in the Award, the deposition cost of Dr. Moeller is also ordered paid by the respondent and its insurance carrier.

Pursuant to stipulation, the Workers Compensation Fund is ordered to pay or reimburse 75% of all costs and benefits associated with this proceeding.

IT IS SO ORDERED.

Dated this ____ day of September 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
Richard J. Liby, Wichita, KS
Jeff K. Cooper, Topeka, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director